



The New Developments of IPR Judicial Protection in China

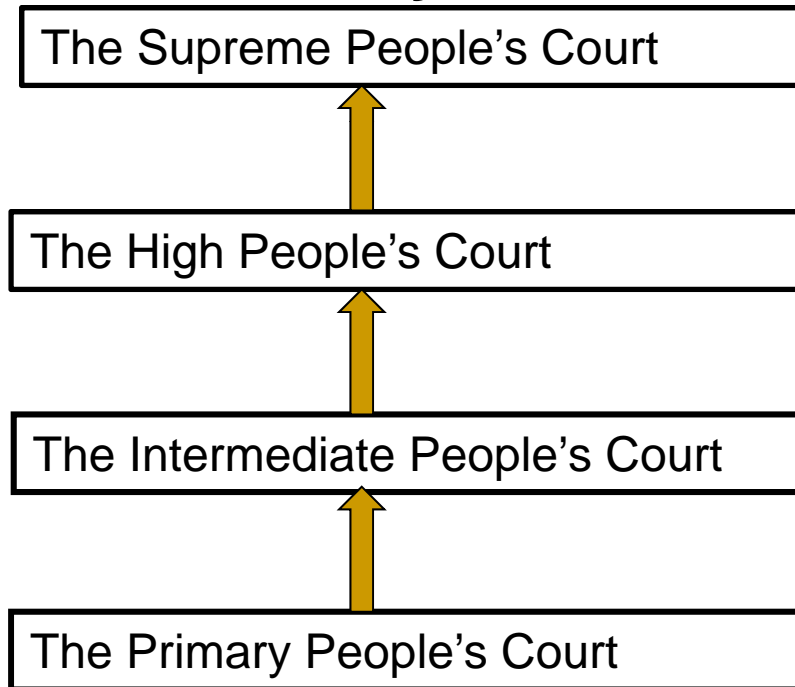
Zhu LI

IPR Division, Supreme People's Court,
P.R.C.

April 10, 2012, New York

the IPR Judicial System of China

- **The court system in China**



The case will end when it undergoes the trials of two level of courts and the decision made by the second trial court will come into force. But, if one party is dissatisfied with the effective judgement, he/she can apply for retrial to the court of the next higher level.

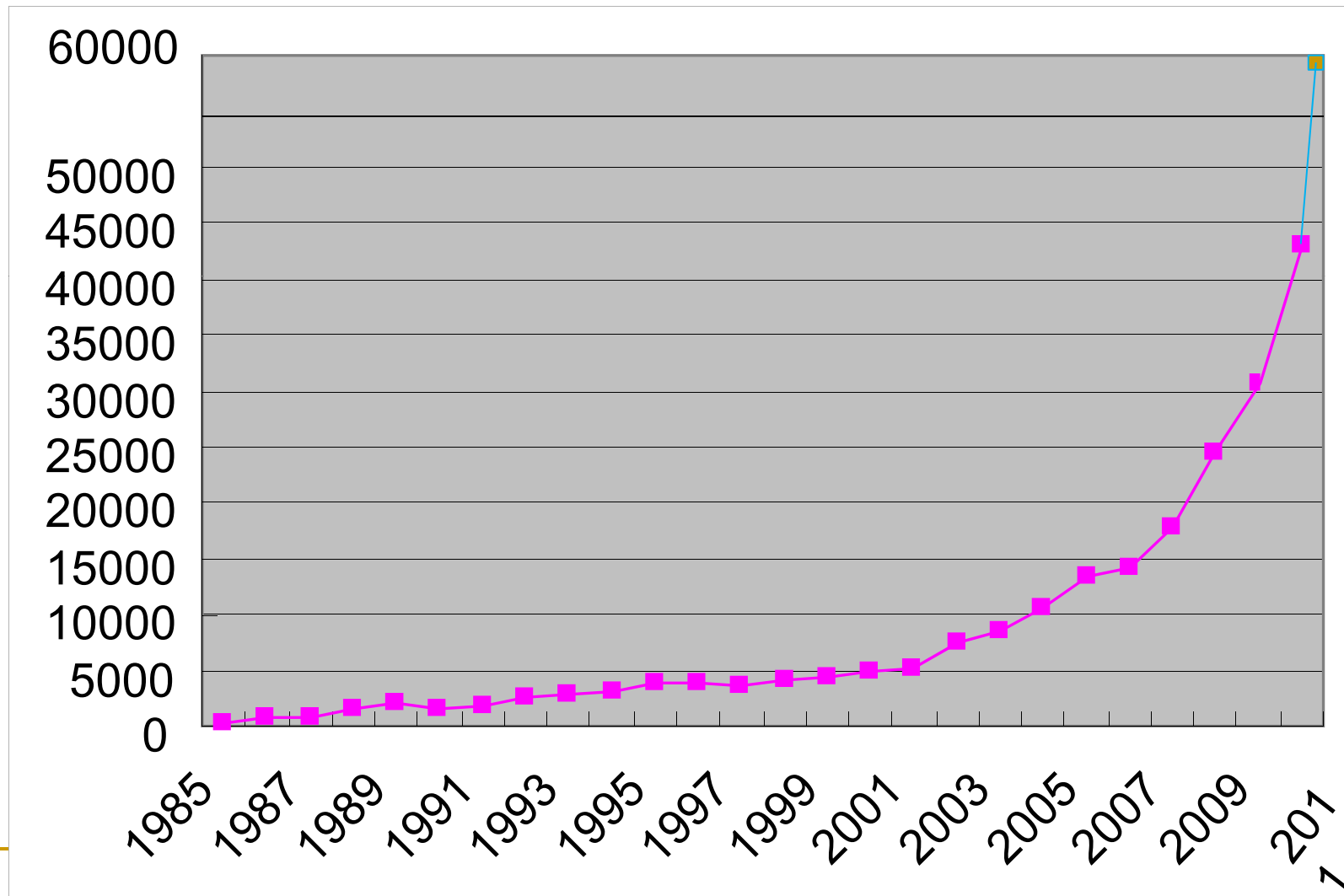
IPR Jurisdictional Rules

- Concentrating jurisdiction over IPR cases
 - Only the designated intermediate court have the jurisdiction over special first trial cases, such as patent, new plant variety and Layout-designs of integrated circuits.
 - Only the approved IPR Primary Courts have the competence of dealing with IPR cases.
 - Until Jan. 1, 2012, 82 intermediate courts have the competence of dealing with patent cases, and 119 Primary Courts obtained the approval of jurisdiction over IPR cases.
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Statistics of IPR Cases

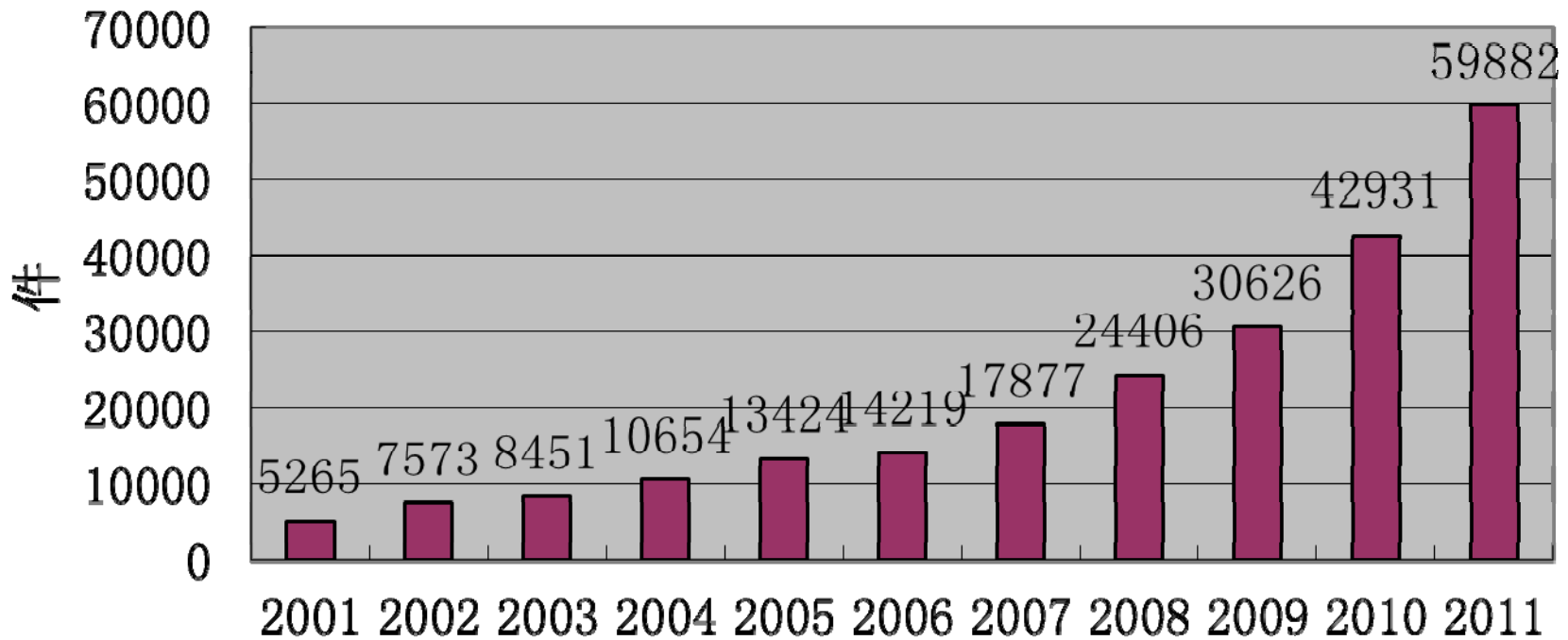
IPR cases including patent cases increased steadily & rapidly

Increase of IPR First Trial Civil Cases (1985-2011)



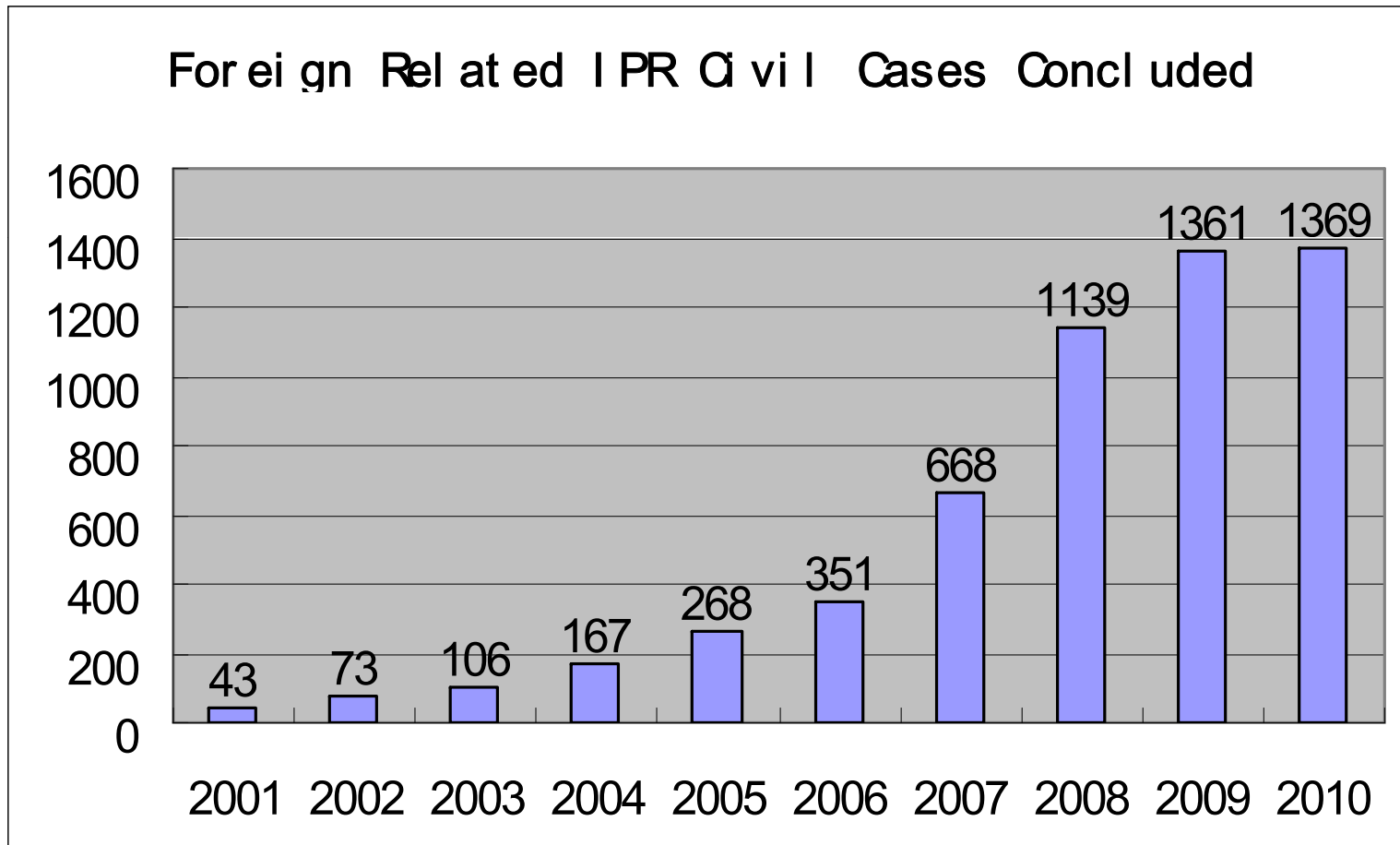
Increase of IPR Civil Cases Post WTO(2001-2011)

IP Civil Cases of 1st Instance Received
Post-WTO



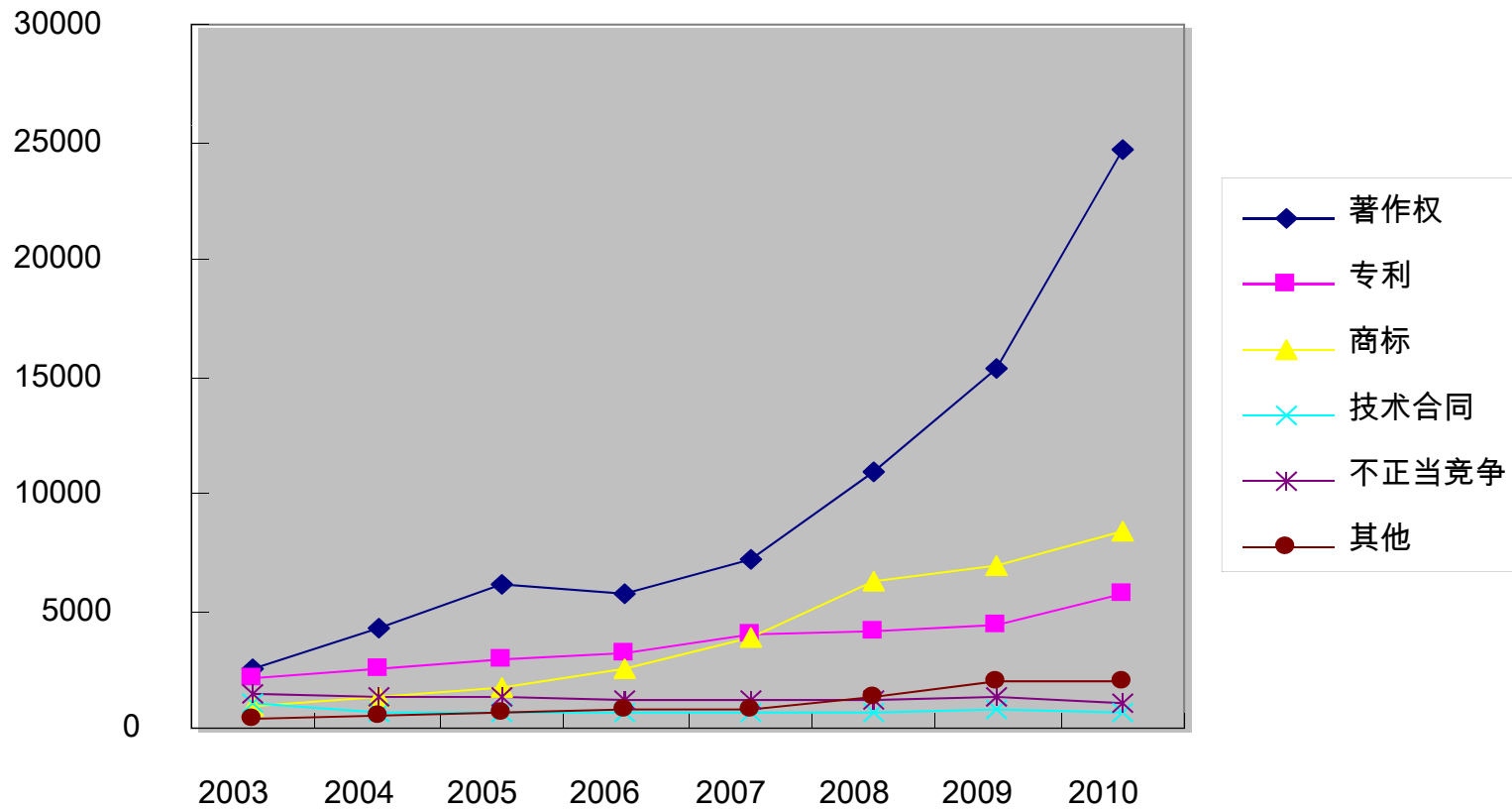
Increase of Foreign Related IPR Cases

(Joint Venture Related Cases not included)



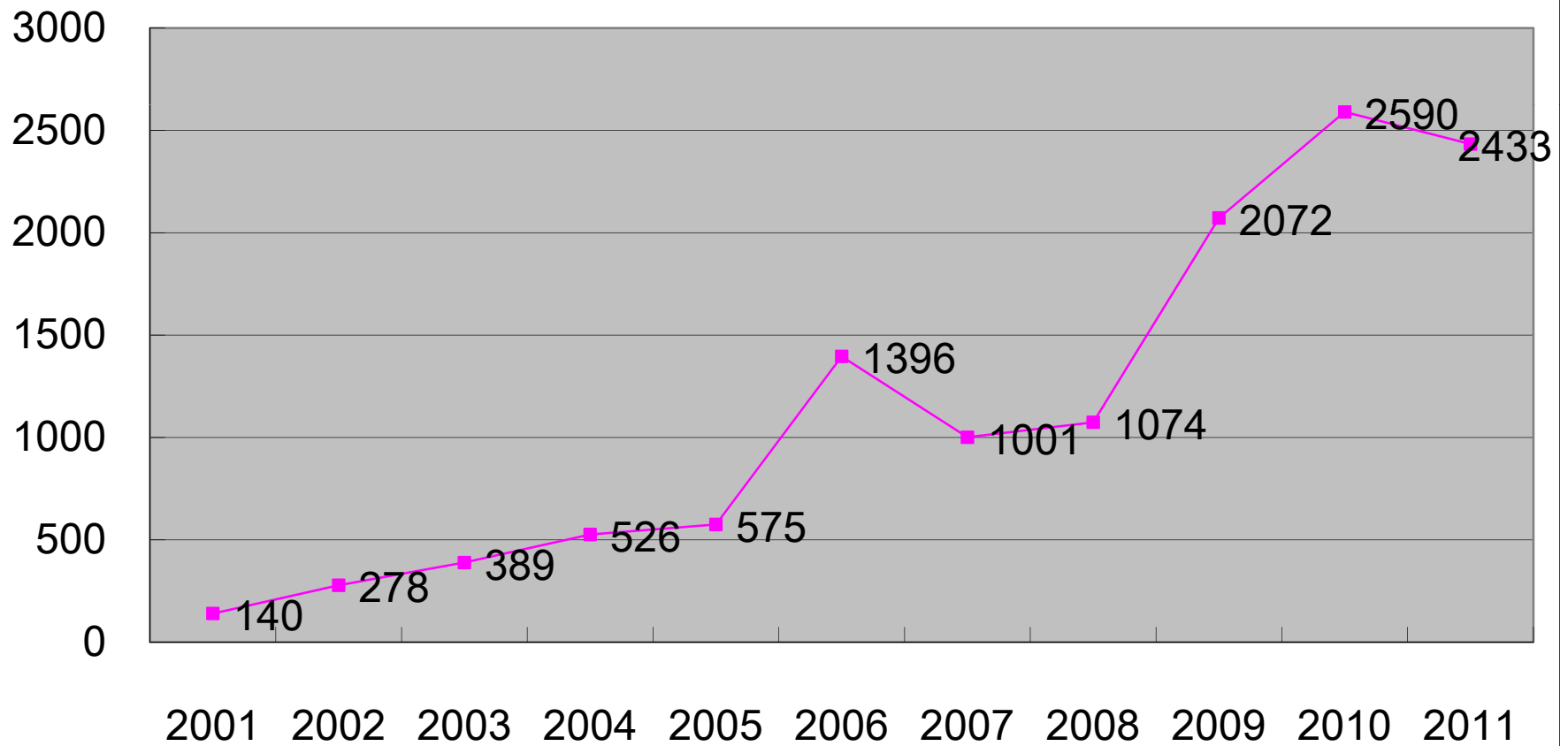
Increase of Various IPR Cases

Trends of Various IPR Cases 2003 - 2010



IPR Judicial Review Cases Post WTO

IPR Judicial Review Cases of 1st Instance
(2001-2011)



IPR Criminal Cases in 2011

- In total, 5504 criminal cases relating to IPR infringement were closed in 2011, 39.62% more than last year.
 - The number of individuals on whom the courts' decisions became effective was 10,055; of which, 7,892 persons got criminal punishment.
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IPR Cases in the Supreme People's Court

- In 2011, the SPC admitted 420 IP-related cases, and closed 423 cases (including carried over cases).
 - Of these, the newly admitted civil cases totalled 305, and concluded 311
 - The SPC admitted 115 new judicial review cases and closed 112
-

ipr.court.gov.cn



中华人民共和国最高人民法院
THE SUPREME PEOPLE'S COURT OF THE PEOPLE'S REPUBLIC OF CHINA



中国知识产权裁判文书网

China IPR Judgments & Decisions

本栏目所列文书仅供参考，内容以正式文本为准。

All documents in this section for reference only; Contents should be confirmed by the original text.

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文书检索

关键字:

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案由:

审理法院:

裁判时间: -

搜索

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THE SUPREME PEOPLE'S COURT OF THE PEOPLE'S REPUBLIC OF CHINA

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2011年4月26日 星期二

4月20日江苏省省长李学勇接受中央媒体“知识产权司法保护江苏行”采访团集中采访 山大华特他和我儿童画 景汉朝副院长为广东省的“司法公开示范法院”授匾并讲话 最高

机构设置

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上午8时30分在本院第四法庭公开开庭审理上诉人苏普特电子公司与上诉人南昌中天电气有限责任公司国际货物买卖合同纠纷一案。特此公告。

王胜俊率团访问老挝时强调：着力推进中老司法合作再上新台阶

本网子网站“中国知识产权裁判文书网”开通 | 中国法院知识产权司法保护状况（2010年） |



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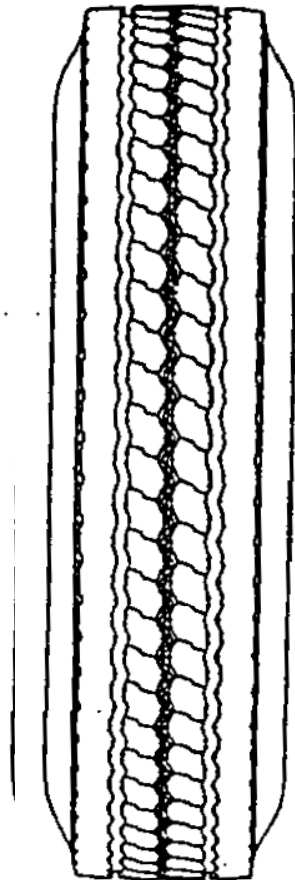
The New Development of Design protection in China

- *Bridgestone Ltd. v. Zhejiang Huntington Bull Rubber Company*

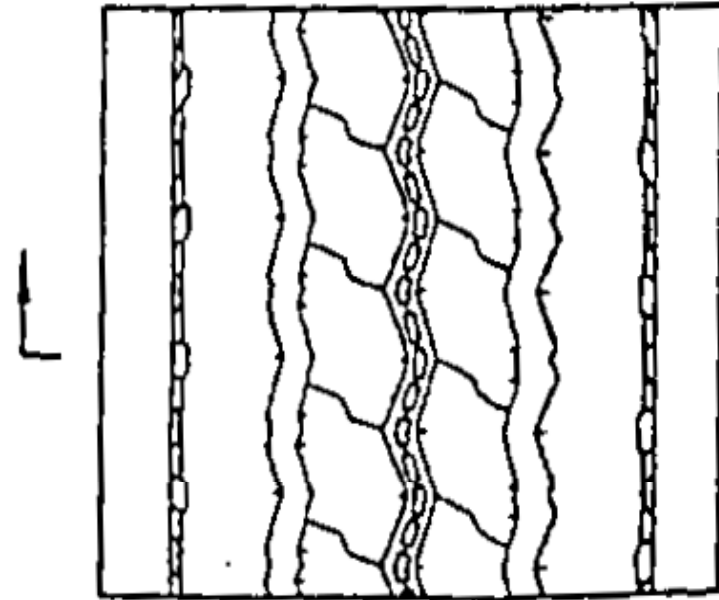
Civil Docket No. 189 (2010)

The New Development of Design protection in China

- The plaintiff's design patent



主视图



主视图的局部放大视图



The prior design



The defendant's product

Supreme People's Court Case:

- *Zhonghan M&G Stationery Manufacture , Ltd. vs. Ningbo Weiyada Pen Manufacture, Ltd.*

Civil Docket No. 16 (2010)

December 3, 2010

-
- July 19, 2002, M&G company (the plaintiff) applied to the SIPO for the design patent used for “affairs pen” , and the patent was authorized on February 19, 2003
 - M&G use the design on its K-35 gel pen after the design patent is granted. The K-35 gel pen is the best seller of M&G’s products.
 - M&G company’s trademark, “M&G 晨光” was appraised as well-known trademarks in 2005.
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- The K-35 gel pen made by M&G



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- Because that the patent annual fee is not paid, the design patent rights have been terminated on October 12, 2005.
 - After the termination of the plaintiff's design patent , the defendant began to produce its gel pen with the same design.
-

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- The defendant's product



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- The plaintiff sued the defendant for unfair competition
 - After the termination of a design patent, can the appearance of goods using the design be protected under the anti-unfair competition law?
 - If the answer is Yes, what conditions need to be satisfied?
-

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- the SPC hold that:
 - In most cases, if a design patent terminated due to expiration of term of protection or for some other reason, the design has entered the public domain and anyone is free to use it.
 - But in the field of intellectual property, an object may be protected by a variety of intellectual property right. The termination of one of these rights does not, of course, lead to the end of other rights.
 - Under the condition that the product using the design is well-known and the design of it has the role of indicating the source of the product, the subsequent operators using the same or similar design will mislead or confuse the consumers. Then the subsequent user will constitute unfair competition.
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- SPC has to find a statute as legal basis of its opinion:
 - **Law of the People's Republic of China for Anti-unfair Competition**

Article 5 : Operators shall not adopt any of the following unfair means to carry on transactions in the market and cause damage to competitors:

(2) using, without authorization, the names, packaging or decoration peculiar to well-known goods or using names, packaging or decoration similar to those of well-known goods so that their goods are confused with the well-known goods of others, causing buyers to mistake them for the well-known goods of others

-
- Here raised another issue: is the gel pan design in this case is one kind of the decorations of product?
 - two kinds of decoration: the one is the decoration consisted of character, pattern and so on, and the another is the decoration consisted of shape or configuration.
 - The first kind of decoration usually has Inherent distinctiveness and the second kind of decoration does not.
 - The user of the second kind of decoration has the heavy burden of proof to show that the shape or configuration acquired the secondary meaning, denoting the source of the product.

The SPC concludes that:

- Even the design patent is expired, the design can be protected under the anti-unfair competition law if :
 - 1) the product using the design is well-know; and
 - 2) the design has the distinct character differed to other design of similar products; and
 - 3) there are enough evidence to prove that the design acquired the secondary meaning though use.

But, the design derived from the nature of goods itself, required for obtaining the technical effect, or giving the goods substantive value should not be protected.

■ **Thanks for listening!**



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